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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re S. N. et al., Persons Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ETHEL C.,

Defendant and Appellant.

D054710

(Super. Ct. No. NJ14043A-C)

APPEAL from orders of the Superior Court of San Diego County, Michael J.

Imhoff, Commissioner. Affirmed.

Ethel C. appeals from dispositional orders of the juvenile court ordering the removal of her children, S.N., G.C. and L.C., from her custody. She contends that there was insufficient evidence to support the court's findings that removal was necessary to protect the children. We disagree and affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

S.N. (currently age 5), G.C. (age 2) and L.C. (not quite 1) are the children of Ethel and her estranged husband, Travis C. During their marriage, Ethel and Travis were involved in numerous incidents of domestic violence, including one in which Travis was arrested for first degree misdemeanor battery while the family was living in Florida. Ethel was also prone to lashing out at the children, particularly S.N., when frustrated. On a number of occasions, Ethel disciplined S.N. and G.C. with a belt. Ethel was investigated for child abuse as a result of her use of such corporal punishment.

The family moved to San Diego in mid-2007. Ethel, a sergeant in the United States Marine Corps, was stationed at Camp Pendleton, where the family lived. Ethel continued to be frustrated with Travis and the children, and there were a number of incidents of domestic violence between Ethel and Travis, including three separate incidents that occurred in November 2008.

The first such incident led to Ethel's arrest, although she was ultimately released to her command unit and stayed in the Camp Pendleton barracks. The San Diego County Health and Human Services Agency (the Agency) was notified of Ethel's possible physical and emotional abuse of S.N. and conducted an investigation. The Agency ultimately created a safety plan—to which Ethel agreed—that required that Ethel live apart from Travis, obtain a restraining order against him, exchange the children with him for visitation purposes only if a neutral adult was present, and stop using physical discipline on the children. Unfortunately, Ethel violated the safety plan a few weeks later

by going to the family's residence and threatening Travis. She was again arrested and returned to the barracks.

Two days later, Ethel violated the safety plan a second time by taking the children to Travis's residence without a neutral third party being present. A neighbor unsuccessfully tried to intervene after hearing the parents yelling at each other. The neighbor called the military police, who arrested Ethel for threatening Travis with a kitchen knife. Although Ethel denied wielding a knife, she admitted that she did have a knife in her car (where the children were at the time), and that the knife was in plain sight and within S.N.'s reach.<sup>1</sup> After the third incident, Travis obtained a military police order against Ethel.

In December the Agency filed petitions on behalf of the children pursuant to Welfare and Institutions Code section 300, subdivision (b), alleging that the parents had exposed the children to domestic violence and failed to adequately protect them from the risk of serious physical harm. (All further statutory references are to the Welfare and Institutions Code.) The court placed the children in foster care, subject to liberal supervised visitation with the parents, and ordered the parents to participate in parenting classes, counseling and domestic violence treatment.

Shortly after the children were detained, an Agency social worker interviewed Ethel, who contended that she had been the victim in each of the domestic violence incidents with Travis. She indicated that she had become bitter and angry with Travis,

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<sup>1</sup> All relevant dates are in 2008 except as otherwise noted.

and admitted that she sometimes took out her frustration on the children by yelling at them. She also admitted that she had been referred to services in the past, but that she had not participated in any of the offered programs.

Because Ethel requested that the children be placed with her, the court set the matter for a contested hearing. Ethel subsequently moved into her own apartment, maintained weekly one-hour visits and daily telephone calls with the children, underwent six therapy sessions, attended parenting classes, and started a domestic violence treatment program. Ethel's therapist recommended that Ethel and S.N. participate in conjoint therapy to foster a better relationship between them.

In preparation for the dispositional hearing, the social worker prepared a report in which he concluded that the parents' three incidents of domestic disturbance in November indicated "an escalating risk to the emotional and physical well being of the children, especially given the young age of the children." Noting that the parents did not report the first two November incidents and that they had historically had difficulty protecting the children from incidents of violence between them, the social worker recommended that the children continue in foster care.

At the contested hearing in mid-February 2009, Ethel testified that she had filed for divorce, and recounted her participation in services required by her case plan. She admitted she had hit S.N. and G.C. with a belt to discipline them, and said she did not believe that this punishment had been excessive, despite their young ages. The Agency argued that the parents were in the early stages of their respective case plans and that the children should remain in foster care. Minors' counsel agreed with the Agency's position.

The court commended both parents for the progress they had made with their case plans, but, based on the "very serious history of domestic violence" and the children's ages, it ordered that the children's placement continue to be in foster care, subject to daytime, unsupervised visitation with each parent and, in the discretion of the social worker with the approval of minors' counsel, overnight visitation. The court also made a finding that, based on the parents' progress in complying with their case plans, the children would likely be returned to their parents' custody by the time of the next review hearing.

Ethel appeals the court's dispositional orders.<sup>2</sup>

#### DISCUSSION

Before the court may order a child physically removed from his or her parent at the dispositional hearing, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned to the parents' custody, and that there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) A parent does not have to pose a danger, nor does the child have to have suffered actual harm, for removal to be appropriate; rather the focus is on whether removal is necessary to avert

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<sup>2</sup> During the pendency of Ethel's appeal, the court placed the children with her for a 60-day trial period.

the possibility of harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.) A parent's past conduct may be probative on this issue if there is reason to believe that the same type of conduct will continue in the future. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.)

We review the juvenile court's dispositional findings to determine whether there is substantial evidence to support them. (*In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1654.) We cannot reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts, but must instead uphold the judgment if there is substantial evidence to support it, even though substantial evidence to the contrary also exists and the trial court might have reached a different result if it had believed the other evidence. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the court's findings or order. (*Ibid.*)

The court's dispositional orders are adequately supported by substantial evidence in this case. The evidence showed that the parents had a long history of escalating domestic violence between them, and that Ethel had consistently taken out her frustration on the children, and particularly on S.N., in the past. Although Ethel had made progress in recognizing the need to change how she responded to Travis and the children in the two and one-half months between the detention hearing and the contested hearing, she continued to feel anger toward Travis and to become frustrated with S.N. despite the fact that the children were in foster care. Ethel admitted that her relationship with S.N. remained strained. Moreover, as of the time of the disposition hearing, she had not yet

begun conjoint therapy sessions with S.N., as her therapist recommended, to try to resolve the difficulties between them. Based on this evidence, the court could have reasonably concluded, as it apparently did,<sup>3</sup> that Ethel could maintain her composure for only limited periods of time while interacting with the children.

Ethel also declined to take responsibility for having violated the safety plan by going to the family residence when there was no neutral adult present. Instead, she attempted to shift the blame to Travis. This conduct, together with Ethel's testimony regarding the propriety of her use of a belt to punish S.N. and G.C., the children's young ages, and the evidence that in the past Ethel and Travis had instructed S.N. not to talk about bruises on S.N.'s body, the court could have reasonably concluded that additional progress was necessary before the children could safely be returned to Ethel's care.

Based on the foregoing evidence, the juvenile court did not err in finding that the children would be at substantial risk of harm if returned to Ethel's custody, and ordering their continued placement in foster care.

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<sup>3</sup> The court initially authorized only one-hour weekly unsupervised visitations for Ethel.

DISPOSITION

The juvenile court's dispositional orders are affirmed.

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AARON, J.

WE CONCUR:

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NARES, Acting P.J.

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McINTYRE, J.